

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILEDIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISIONNovember 06, 2024
LAURA A. AUSTIN, CLERK
BY: /s/T. Taylor
DEPUTY CLERK

JOHN C. GASKINS,)	
)	Case No. 7:24-cv-00305
Plaintiff,)	
)	<u>MEMORANDUM OPINION</u>
v.)	
)	By: Hon. Thomas T. Cullen
WARDEN TIM BACK <i>et al.</i> ,)	United States District Judge
)	
Defendants.)	

Plaintiff John C. Gaskins, proceeding *pro se*, filed a complaint under 42 U.S.C. § 1983 against Defendants Warden Tim Back, Major Stokes, and Captain Gordon on May 7, 2024. (*See* Compl. [ECF No. 1].) After Plaintiff paid the filing fee, the Court advised Plaintiff that, because he was not proceeding *in forma pauperis*, he was responsible for serving Defendants and ordered that he effect such service within 90 days. (Oral Order, May 29, 2024 [ECF No. 4].) Upon Plaintiff's motion, the Court extended the time for service and ordered Plaintiff to "serve the complaint on the defendants no later than September 30, 2024." (Oral Order, Aug. 12, 2024 [ECF No. 7].)

Plaintiff did not serve Defendants by that date. Accordingly, the Court ordered Plaintiff to file a response within 21 days showing good cause why this action should not be dismissed without prejudice as to Defendants under Rule 4(m). (*See* Order, Oct. 7, 2024 [ECF No. 10].) The Court also notified Plaintiff that his failure to show good cause within the allotted time "may result in dismissal of this action without prejudice for failure to serve or for failure to prosecute." (*Id.*) Nevertheless, Plaintiff did not comply with the Court's order, and there is nothing in the record showing that Plaintiff has served Defendants.

Under Federal Rule of Civil Procedure 4(m),

[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Because Plaintiff has failed to timely serve Defendants and because he refused to comply with this Court's order directing him to respond and show cause, the Court will dismiss this action without prejudice. *See* Fed. R. Civ. P. 4(m); Fed. R. Civ. P. 41(b). The Court notes that, because this dismissal is without prejudice, Plaintiff may, if he so chooses, refile his claims in a separate civil action subject to the applicable statute of limitations.

The Clerk is directed to forward a copy of this Memorandum Opinion and the accompanying Order to Plaintiff.

ENTERED this 6th day of November, 2024.

/s/ Thomas T. Cullen

HON. THOMAS T. CULLEN
UNITED STATES DISTRICT JUDGE